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Letter Ruling 84-3: Emergency Communicators for Sick and Elderly

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March 05, 1984

("Company") manufactures electronic communicators that are used by the sick and the elderly in their homes to ensure that they will have ready access to emergency services. You inquire about the application of the sales and use taxes to a charge, which you characterize as a health monitoring fee ("Fee"), that is paid to the Company by its customers who use the communicators.

The communicators are connected by telephone lines to a central computer at a monitoring station in Ohio. The central monitoring station is not owned or operated by the Company; it is owned and operated by a separate enterprise that the Company has engaged to provide the monitoring service.

Customers are instructed to activate their communicators once daily by pushing a button. If they do not do so, an operator at the monitoring station is alerted. He calls the customer to determine whether the customer needs emergency assistance. If so, the operator contacts ambulance, police, fire or other emergency services. If there is no answer, the operator calls a neighbor or other person who has been designated by the customer.

By pushing another button on the communicator, a customer may indicate at any time that he needs emergency services. An operator will then call to determine the nature of the emergency, and contact the appropriate service.

Customers pay the Fee to the Company on a monthly basis for the period during which they have a communicator in their homes. They also pay the Company a deposit on the communicator which is refunded when the communicator is returned to the Company. In addition, the Company makes a small, one-time charge that covers any required maintenance of the communicator, a monthly check of its operating efficiency, the paperwork incidental to placing a new customer in the health monitoring system.

General Laws Chapter 64H, Section 2 imposes an excise on retail sales of tangible personal property in Massachusetts by any vendor. "Sale" is defined as including:

"[A]ny transfer of title or possession, or both, exchange, barter, lease, rental, conditional or otherwise, of tangible personal property for a consideration, in any manner or by any means whatsoever." G.L. c. 64H, § 1(12)(a).

Personal service transactions that involve no sale of tangible personal property, or involve sales as inconsequential elements for which no separate charges are made, are not subject to the sales tax (G.L. c. 64H, § 1(13)(c)). However, any amount paid for any services that are a part of a sale of tangible personal property are included in determining the sales price on which the tax is based (G.L. c. 64H, § 1(14)(b)(i)).

Based on the foregoing, it is ruled that the Company is renting the communicators to its customers, as well as providing a monitoring service. The rental is not an inconsequential element of a service transaction. Since no separate charge is made for the rental, the entire amount of the Fee is subject to the sales tax. The one-time charge that is broken out for placing a new customer in the system, maintenance of the communicator, and monthly checks of its operating efficiency, is also subject to the sales tax.

Very truly yours
Ira A. Jackson
Commissioner of Revenue

March 05, 1984
LR 84-3